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10

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 JUMP OPERATIONS, LLC,

Case No.: 2:22-cv-00575-GMN-DJA

14 Plaintiff,

15 v.

16 RICHARD WRIGHT MERRYMAN,

17 Defendant.

**EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER WITHOUT NOTICE IN
ANTICIPATION OF FUTURE
REQUEST FOR PRELIMINARY
INJUNCTION**

18

20 COMES NOW, Plaintiff Jump Operations, LLC (“Jump”) by and through its
21 counsel of record and hereby submits this Emergency Motion for Temporary Restraining
22 Order Without Notice in Anticipation of Future Request for Preliminary Injunction (the
23 “Motion”) against Defendant Richard Wright Merryman (“Merryman”).

24 This Motion is based upon the pleadings in this action, the following
25 memorandum of points and authorities, the declarations of Jonathan Marcus Jeffrey A.
26 Wakolbinger, Esq., and James M. Jimmerson, Esq.,¹ the exhibits supplied herewith and
27

28 ¹ The Declaration of James M. Jimmerson contains the certifications required under LR 7-4
concerning emergency motions.

1 any arguments made by counsel during any hearing on the Motion. A proposed
2 Temporary Restraining Order is attached as Exhibit 1 to this Motion.

3 DATED April 7, 2022.

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INDEX OF EXHIBITS

2 Exhibit	3 Exhibit Description
1	[Proposed] Temporary Restraining Order
2	Declaration of Jonathan Marcus
3	Declaration of Jeffrey A. Wakolbinger, Esq.
4	Printout of website at http://wormhole.com
5	Domain registration record for wormhole.com
6	Printout from "About Us – Domain Agents"
7	Printout from "Buying Domain Names with DomainAgents"
8	Printout from "Selling Domain Names with DomainAgents"
9	Printout from DomainAgents Support FAQs
10	DomainAgents Terms and Conditions
11	Printout from DomainAgents Support FAQs
12	July 1, 2021 email from DomainAgents to J. Marcus
13	Printout of Messages Exchanged Through DomainAgents Platform
14	Letter from Jump to Merryman Dated July 21, 2021
15	Screen shot of DomainAgents Negotiation History
16	Declaration of James M. Jimmerson, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 This case concerns a simple matter: Defendant Merryman's unabashed failure to
4 deliver a unique Internet domain name to Plaintiff Jump in accordance with a valid
5 contract between the parties. Merryman owns the domain name, wormhole.com (the
6 "Wormhole Domain"). He entered into a contract with Plaintiff Jump for the sale of that
7 domain name at a set price. When Jump tendered payment, Merryman reneged,
8 breaching the contract and causing harm to Jump. Jump filed this action seeking specific
9 performance of the contract. It simply wants Defendant Merryman to accept payment
10 and transfer the Wormhole Domain to Jump pursuant to the parties' agreement.

11 Jump’s reason for filing this Motion is simple, as well. If Merryman—who at every
12 step since entering into the contract has demonstrated bad faith in his dealings with
13 Jump—were to transfer the Wormhole Domain to another party, Jump would be
14 deprived of the unique and irreplaceable asset it contracted to purchase. Jump therefore
15 seeks an injunction that would prohibit Merryman from selling, transferring, or
16 encumbering the Wormhole Domain pending final resolution of this dispute. Jump
17 initially submits this motion *ex parte* and without notice to Merryman in order to
18 prevent a situation where Merryman, upon receiving notice of this action, could transfer
19 the Wormhole Domain to another registrar or registrant prior to an opportunity for
20 Jump to be heard on its motion for preliminary injunction. A temporary restraining
21 order will preserve the status quo until the parties can be heard, in anticipation of a
22 further request to issue a preliminary injunction to preserve the status quo through
23 resolution of this dispute.

24 II. STATEMENT OF RELEVANT FACTS

25 Jump is actively involved in the continued development and growth of a
26 blockchain project called the “Wormhole Network.” (Ex. 2, Declaration of Jonathan
27 Marcus (“Marcus Decl.”) ¶ 2.) In June 2021, Jump decided to purchase the Wormhole
28 Domain for use in connection with the Wormhole Network. (Marcus Decl. ¶ 3.) At the

1 time, the Wormhole Domain resolved to a landing page, stating, “THIS WEB SITE
 2 OFFERS NO SERVICES TO THE PUBLIC.” (Marcus Decl. ¶ 3.) The Wormhole Domain
 3 currently resolves to that same webpage. (Ex. 3, Declaration of Jeffrey A. Wakolbinger,
 4 Esq. (“Wakolbinger Decl.”) ¶ 2 & Ex. 4.)

5 The Wormhole Domain is registered with Network Solutions, LLC, a domain
 6 name registrar. (Wakolbinger Decl. ¶ 2 & Ex. 5.) Acting through an individual employee,
 7 Jump made an offer to purchase the Wormhole Domain through DomainAgents (Marcus
 8 Decl. ¶ 4), a third-party website “created to assist domain owners and buyers through
 9 the often daunting process of domain negotiations and transfers” (Wakolbinger Decl. ¶ 4
 10 & Ex. 6). As described on its website, DomainAgents acts as an intermediary between
 11 potential buyers and sellers of domain names. (Wakolbinger Decl. ¶ 4 & Ex. 6.) A buyer
 12 can make an offer through DomainAgents, who will then locate the domain owner and
 13 present the buyer’s offer; if the domain owner chooses to engage in negotiations, it does
 14 so directly with the potential buyer by exchanging messages through the DomainAgents
 15 platform. (Wakolbinger Decl. ¶ 5 & Ex. 7.) As an incentive, DomainAgents pays a \$10
 16 credit to any domain owner who responds to an offer. (Wakolbinger Decl. ¶ 6 & Ex. 8.)
 17 If an agreement is reached between a seller and a buyer, DomainAgents facilitates
 18 transfer of the domain name and money via Escrow.com. (Wakolbinger Decl. ¶ 7 & Ex.
 19 9.) All sellers who respond to an offer presented by DomainAgents agree to abide by
 20 DomainAgents’ terms, which provide, among other things: “Agreements are legally
 21 binding through the completion of the transaction.” (Wakolbinger Decl. ¶¶ 8–9 & Exs.
 22 10, 11.)

23 On June 29, 2021, Jump presented an initial offer through DomainAgents to
 24 purchase the Wormhole Domain for \$2,500. (Marcus Decl. ¶¶ 4,6 & Ex. 13.) On July 1,
 25 2021, Merryman responded to Jump’s offer with a counteroffer: “The price for
 26 wormhole.com is a firm US\$50,000. –Dick-” (Marcus Decl. ¶ 5 & Ex. 13.²) On July 1,
 27

28 ² A court may consider hearsay evidence in the context of a preliminary injunction, particularly
 where the need for a quick determination “makes it difficult to obtain affidavits from persons

1 2021, Jump accepted Merryman's counteroffer to sell the Wormhole Domain for \$50,000,
 2 and the DomainAgents platform indicated, "Agreement Reached." (Marcus Decl. ¶¶ 5, 9
 3 & Exs. 13, 15.)

4 After DomainAgents provided escrow instructions to the parties, Merryman, on
 5 July 12, 2021, reneged on the deal, stating, "Nope, sorry, I changed my mind. This was
 6 too easy, I'm either leaving a lot of money on the table or it is a scam. Either way, no
 7 sale. If you want to make a reasonable offer, then you are encouraged to do so. –Dick."
 8 (Marcus Decl. ¶¶ 6, 7 & Exs. 12, 13.) Jump was notified by DomainAgents that
 9 Merryman was not complying with instructions to move the transaction into escrow and
 10 that Merryman was thus in breach of his sales agreement. (Marcus Decl. ¶ 6 & Ex. 13.)
 11 On July 19, 2021, after further efforts by Jump to enforce the agreement and move the
 12 transaction to escrow, Defendant replied, "Yeah, good luck with legal action. The price
 13 is US\$100,000.-Dick." (Ex. 13.)

14 On July 21, 2021, Jump's in-house counsel sent a letter to Merryman regarding
 15 his breach of the agreement to sell the Wormhole Domain for \$50,000 and demanding
 16 that he accept the agreed-upon amount and transfer the domain name. (Marcus Decl.
 17 ¶ 8 & Ex. 14.) Merryman did not respond. (Marcus Decl. ¶ 8.)

18 **III. LEGAL ARGUMENT**

19 **A. Legal Standard for TRO / Preliminary Injunctions**

20 The standard for issuing a temporary restraining order ("TRO") is the same as
 21 that for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brushy &*
 22 *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001); *Ali v. United States*, 932 F. Supp. 1206, 1208
 23 (N.D. Cal. 1996). Additionally, a TRO may be issued without notice to the adverse party
 24 if (A) specific facts in an affidavit or a verified complaint clearly show that immediate
 25 and irreparable injury, loss, or damage will result to the movant before the adverse party

26 who would be competent to testify at trial." *Flynt Distr. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th
 27 Cir. 1984). If this case proceeds to discovery, Jump will subpoena a witness from DomainAgents
 28 to authenticate the correspondence. In any event, Merryman's own communications are
 statements of a party opponent and thus excluded from the definition of hearsay under the
 Federal Rules of Evidence. See Fed. R. Evid. 801(d)(2).

1 can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts
 2 made to give notice and the reasons why it should not be required.”³ Fed. R. Civ. P.
 3 65(b)(1). Such TROs without notice may not remain in effect for more than 14 days
 4 (absent an extension for good cause or the adverse party’s consent). Fed. R. Civ. P.
 5 65(b)(2). The purpose of a TRO “is to preserve the status quo before a preliminary
 6 injunction hearing may be held.” *Ditech Fin. LLC v. Am. W. Vill. II Owners Ass’n*, No.
 7 2:17-cv-2164-JCM-GWF, 2017 WL 3610559, at *2 (D. Nev. Aug. 22, 2017).

8 In all cases, a district court should enter preliminary injunctive relief only “upon
 9 a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Resources*
 10 *Defense Council, Inc.*, 555 U.S. 7, 22 (2008). Such a showing requires that plaintiff
 11 establish it is “likely to succeed on the merits, that [it] is likely to suffer irreparable
 12 harm in the absence of preliminary relief, that the balance of equities tips in [its] favor,
 13 and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20; *see also Sierra*
 14 *Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir. 2009) (“Under *Winter*, [parties]
 15 seeking a preliminary injunction must establish that (1) they are likely to succeed on
 16 the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary
 17 relief; (3) the balance of equities tips in their favor; and (4) a preliminary injunction is
 18 in the public interest”).

19 In evaluating the four factors, the court may apply a sliding-scale test, under
 20 which “the elements of the preliminary injunction test are balanced, so that a stronger
 21 showing of one element may offset a weaker showing of another.” *Alliance for the Wild*
 22 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

23 General legal authority concerning each of the four elements is set forth below.

24 **1. Likelihood of Success on the Merits**

25 “[T]he elements of a breach of contract claim in Nevada are (1) the existence of a
 26 valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach.

27
 28 ³ The certification required by Fed. R. Civ. P. 65(b)(2)(B) is set forth at paragraph 10 of the
 concurrently filed Declaration of Jeffrey A. Wakolbinger, Esq.

1 *Contreras v. Am. Fam. Mut. Ins. Co.*, 135 F. Supp. 3d 1208, 1227 (D. Nev. 2015) (citing
 2 *Richardson v. Jones*, 1 Nev. 405, 409 (1865); *Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d
 3 892, 899 (9th Cir. 2013)).

4 **2. Irreparable Harm**

5 Irreparable harm includes “a viable threat of serious harm which cannot be
 6 undone.” *Zenith Radio Corp. v. United States*, 710 F.2d 806, 809 (Fed. Cir. 1983)
 7 (internal citations omitted). “[E]conomic injury alone does not support a finding of
 8 irreparable harm, because such injury can be remedied by a damage award,” but
 9 evidence of loss of goodwill is sufficient. *Las Vegas Sands Corp. v. Fan Yu Ming*, 360 F.
 10 Supp. 3d 1072, 1079 (D. Nev. 2019) (citations omitted). A loss of business opportunities
 11 may also constitute irreparable harm. *Celsis In Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d
 12 922, 930 (Fed. Cir. 2012) (citations omitted).

13 **3. Balance of Hardships**

14 Before issuing a preliminary injunction, a court must weigh “the competing
 15 claims of injury and ... consider the effect on each party of the granting or withholding
 16 of the requested relief.” *Las Vegas Sands Corp.*, 360 F. Supp. 3d at 1081 (quoting *Amoco
 17 Prod. Co. v. Village of Gambell, AK*, 480 U.S. 531, 542 (1987)).

18 **4. Public Interest**

19 “The public interest analysis for the issuance of a preliminary injunction requires
 20 [the court] to consider ‘whether there exists some critical public interest that would be
 21 injured by the grant of preliminary relief.’” *Indep. Living Ctr. of So. Cal., Inc. v.
 22 Maxwell-Jolly*, 572 F.3d 644, 659 (9th Cir. 2009) (quoting *Hybritech Inc. v. Abbott Lab.*,
 23 849 F.2d 1446, 1458 (Fed. Cir. 1988)).

24 **B. The Court Should Issue a Temporary Restraining Order**

25 This case—Involving an unambiguous breach of contract after counteroffer and
 26 acceptance, an irreplaceable asset, and demonstrated bad faith by the Defendant—is a
 27 textbook example of the appropriate circumstance of the issuance of a TRO. As described
 28 herein, a TRO should be entered because: (1) there is a likelihood that Jump will succeed

1 on the merits of its claims; (2) Jump is likely to suffer irreparable harm without the
2 issuance of the requested injunctive relief; (3) the balance of hardships greatly favors
3 the issuance of the requested injunctive relief; and (4) the public interest would best be
4 served by the issuance of the requested injunction.

5 **1. Jump is Likely to Succeed on the Merits of Its Claim for**
6 **Breach of Contract.**

7 “Basic contract principles require, for an enforceable contract, an offer and
8 acceptance, meeting of the minds, and consideration.” *May v. Anderson*, 121 Nev. 668,
9 672, 119 P.3d 1254, 1257 (2005). Each of these elements existed here: After accepting
10 Jump’s invitation through DomainAgents to come to the bargaining table, Merryman
made a firm offer to sell the Wormhole Domain for \$50,000. Jump accepted the offer.
11 The agreement was supported by valid, bargained-for consideration: an exchange of
12 something of value from Merryman (the Wormhole Domain) for something of value from
13 Jump (\$50,000).

14 There is also no question that Merryman breached the agreement. After Jump
15 accepted the firm offer Merryman put in writing, Merryman admitted—also in writing—
16 that he “changed [his] mind.” (Marcus Decl. ¶ 7 & Ex. 13.) He then refused to enter into
17 the escrow transaction as instructed by the sales agent. Merryman still owns the domain
18 name he agreed to transfer to Jump and thus has not performed under the contract.
19

20 Jump is likely to succeed in showing it was harmed by Merryman’s breach of the
21 sales contract. There is only one Wormhole Domain. Jump cannot get this domain name
22 from any source other than Merryman.

23 **2. Jump Is Likely to Be Irreparably Harmed Unless a TRO is**
Issued.

24 The Wormhole Domain is unique. There is only one <wormhole.com>. If
25 Merryman transfers it to anyone other than Jump, or in any way encumbers it during
26 the pendency of this proceeding, Jump will be irreparably harmed because Jump may
27 not be able to acquire the Wormhole Domain from a third-party purchaser at the agreed-
28

1 upon price (or at all) and there is no other source from which Jump can obtain the
 2 Wormhole Domain.

3 Indeed, courts have found the potential for a party to transfer a disputed domain
 4 to another registrant during the pendency of a case could cause irreparable harm and
 5 supports the issuance of a preliminary injunction. *See, e.g., Las Vegas Sands Corp. v.*
 6 *Fan Yu Ming*, 360 F. Supp. 3d 1072, 1080 (D. Nev. 2019) (“Irreparable harm is also
 7 implicated where there is a potential for an infringing defendant to transfer domain
 8 names to a different registrar outside of a court’s jurisdiction.”); *Hakkasan LV, LLC v.*
 9 *Tsang Hang Wang*, No. 2:13-cv-01122-GMN, 2013 WL 3944175, at *3 (D. Nev. July 30,
 10 2013) (“Plaintiffs will suffer irreparable injury if the Court does not require the domain
 11 name registrar … to lock the infringing … domain name pending litigation of this
 12 matter. … because Defendants could transfer the Infringing Domain Name to another
 13 registrant or registrar.”).

14 Here, a transfer of the Wormhole Domain to a third party would create
 15 irreparable harm to Jump. The Wormhole Network project is named and publicly
 16 disclosed. (Marcus Decl. ¶ 10.) The most logical domain name for that project is the one
 17 that matches the name of the project and the goodwill built up in that project:
 18 wormhole.com. (Marcus Decl. ¶ 10.) If Merryman were to transfer the Wormhole domain
 19 name to a third party, that party may choose not to sell the domain name to Jump, and
 20 Jump would have no recourse against a subsequent purchaser who was not a party to the
 21 agreement breached by Merryman. (Marcus Decl. ¶ 10.)

22 **3. The Balance of Hardships Weighs Heavily in Jump’s Favor.**

23 As explained above, without an injunction that would prohibit Merryman from
 24 transferring or encumbering the Wormhole Domain during the pendency of this suit,
 25 Jump risks forever losing the consideration bargained for in its agreement with
 26 Merryman. On the other hand, Merryman’s bargained-for consideration would not be
 27 put at risk by the issuance of an injunction. Through this lawsuit, Jump is seeking to
 28 provide Merryman with the full consideration promised for the Wormhole Domain.

1 Practically speaking, the only way an interim injunction could impose any
 2 hardship on Mr. Merryman would be if, during the pendency of this dispute, he were
 3 presented with an offer from a third party to purchase the Wormhole Domain at a price
 4 greater than the \$50,000 already accepted by Jump. This possibility highlights the need
 5 for a preliminary injunction. Having contracted with Jump to sell the Wormhole Domain
 6 at a set price and then reneging on that deal at the point when Jump was tendering
 7 payment, Merryman cannot be permitted to wreak further mischief by trying to dispose
 8 of or encumber the bargained for consideration pending final resolution of this dispute.

9 **4. The Public Interest Supports Jump's Request for Injunctive
 10 Relief.**

11 There is no “critical public interest” that would be injured if Merryman were
 12 prohibited from transferring the Wormhole Domain pending final resolution of this
 13 dispute. *See Indep. Living Ctr. Of So. Cal., Inc. v. Maxwell-Jolly*, 572 F.3d at 659.

14 In fact, the public interest is best served by preserving the consideration of the
 15 contract between Merryman and Jump because the public interest strongly favors
 16 enforcing contracts. *See, e.g., BZ Clarity Tent Sub LLC v. Ross Mollison Int'l Party, Ltd.*,
 17 No. 2:15-cv-1065-JCM-CWH, 2015 WL 3657249, at *7 (D. Nev. June 12, 2015) (“The
 18 right to contract is fundamental... An injunction in this instance protects the public’s
 19 interest in the integrity and enforceability of contracts.”); *NAC Found., LLC v. Jodoin*,
 20 No. 2:16-cv-1039-GMN-VCF, 2016 WL 4059648, at *2 (D. Nev. July 26, 2016) (issuing
 21 preliminary injunction in action for breach of purchase agreement in part because “[a]n
 22 injunction in this instance protects the public’s interest in the integrity and
 23 enforceability of contracts.”).

24 **IV. CONCLUSION**

25 Based upon the foregoing, Jump respectfully requests that the Court find that a
 26 temporary restraining order is necessary and should be issued (1) to enjoin Defendant
 27 Merryman from selling, transferring, or otherwise encumbering the Wormhole Domain,
 28 and (2) to lock the Wormhole Domain with the registrar, Network Solutions, LLC. Doing

1 so will preserve the status quo, preventing irreparable harm to Jump with no significant
2 burden to Merryman. This TRO should be issued with a view toward issuing a
3 preliminary injunction prohibiting Defendant Merryman from disposing of the asset
4 that is the subject of this dispute while the matter remains pending.

5 A proposed Temporary Restraining Order is attached as Exhibit 1.

6 DATED April 7, 2022.

7 THE JIMMERSON LAW FIRM, P.C.
8

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